In the High Court of Punjab and Haryana, Chandigarh.

CWP No. 9990 of 2005

Date of Decision: 23.10.2006

Manorma Joshi (Sidhu)

....Petitioner

Versus

State of Punjab and others.

....Respondents.

Coram:- Hon'ble Mr.Justice J.S. Khehar.
Hon'ble Mr. Justice S.D. Anand.

Present: Mr. R.C. Dimri, Advocate
for the petitioner.

Mr. Ashok Aggarwal, Addl. A.G., Punjab and
Mr. B.S. Chahal, AAG, Punjab
for the respondents.

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J.S. Khehar, J. (Oral).

While the petitioner was posted as Principal, Government College, Hoshiarpur, she was issued a memorandum of charges, under the provisions of the Punjab Civil Services (Punishment and Appeal) Rules, 1970, on 19.9.2003. The petitioner submitted a detailed reply thereto, denying the allegations levelled against her. Finding the reply filed by the petitioner as unsatisfactory, the authorities chose to hold a regular departmental enquiry against the petitioner. For the aforesaid purpose, Mr. S.L. Jain, Deputy Director, from the office of the DPI (Colleges), Punjab, was appointed as the enquiry officer. The enquiry officer allegedly recorded the statements of the witnesses on behalf of the department, on 19.5.2004 and 20.5.2004. It is also the case of the petitioner, that she was not afforded an opportunity to cross-examine the witnesses produced by the

department, before the enquiry officer. Consequent upon the conclusion of the enquiry proceedings, the enquiry officer found the petitioner guilty of two of the charges levelled against her, in his report dated 1.6.2004 (Annexure P-19). Consequent upon the determination at the hands of the enquiry officer, the petitioner was inflicted with the punishment of stoppage of one increment with cumulative effect, by an order dated 15.4.2005 (Annexure P-24).

Through the instant writ petition, the petitioner has impugned the procedure adopted by the authorities in holding the departmental enquiry against her, as also, the eventual order of punishment passed against her, on 15.4.2005.

The petitioner, inter-alia, has impugned the departmental proceedings conducted against her, by raising two primary contentions, firstly, that the enquiry proceedings were conducted against her, by an officer who was junior to her. And secondly by asserting, that the petitioner had not been afforded an opportunity to cross-examine the witnesses produced on behalf of the department, during the course of the enquiry proceedings. The final order dated 15.4.2005 has been impugned by asserting, that the same is a non-speaking order, which does not take into consideration any of the pleas raised by the petitioner, against the findings recorded by the enquiry officer.

We have examined the record produced before us, including the record of the enquiry proceedings. The same reveals, that the statements of the witnesses were recorded on 20.5.2004. The record produced before us, does not indicate, that the petitioner was afforded an opportunity to cross-examine the witnesses produced on behalf of the department.

In so far as, the holding of the enquiry at the hands of a junior employee is concerned, it has been acknowledged in paragraph 19(vi) of the joint written statement, filed on behalf of respondents No.1 and 2, that the enquiry officer was junior to the petitioner, as per the existing seniority list.

We have also perused the impugned order dated 15.4.2005. The same does not deal with even a single of the pleas raised by the petitioner.

On all the counts raised by the petitioner, we are satisfied, that the enquiry proceedings, as well as, the final order passed against the petitioner, deserve to be set aside.It is apparent, that the petitioner was not afforded an opportunity to cross-examine the witnesses produced before the enquiry officer, on behalf of the department, and therefore, a fair and reasonable opportunity cannot be stated to have been afforded to the petitioner in the departmental enquiry held against her. The enquiry proceedings held against the petitioner, were obviously unsustainable in law because the same had been conducted by a person, who was junior to the petitioner. Last, but not the least, the impugned order dated 15.4.2005, is clearly a non-speaking order, and the same accordingly, deserves to be set aside.

For the reasons recorded above, the enquiry proceedings, as well as, the impugned order dated 15.4.2005, are hereby set aside.

Writ petition stands disposed of in the aforesaid terms.

(J.S. Khehar)
Judge.

(S.D. Anand)
Judge.

23.10.2006
sk.